

## Wage and Hour Division, Labor

## §511.13

demand, competitive relationships, tariff rates, and similar marketing factors;

(c) Comparative production costs in American Samoa, on the mainland, and in foreign countries, together with the factors responsible for differences;

(d) Financial conditions and trends since promulgation of the present wage order as reflected in profit and loss statements and balance sheets; and

(e) Data bearing on proper definitions of classifications within an industry.

[55 FR 12120, Mar. 30, 1990]

### §511.12 Committee and subcommittee meetings.

(a) The full committee, or a quorum thereof, will convene at the time and place appointed for an initial prehearing meeting as provided in the Secretary's order initiating the proceedings (note §511.2). The full committee acting through a quorum will decide at that meeting whether it will preside at the reception at the hearing or will authorize a subcommittee to preside. Any resolution authorizing a subcommittee to hold the hearing shall provide a period of 30 days after:

(1) The subcommittee has filed its recommended report and

(2) A transcript of the subcommittee hearing is made available to the parties, for the parties to file exceptions to the recommended report, and the committee shall meet promptly thereafter on call of its chairperson or the Administrator to consider exceptions and prepare its final report.

(b) A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairperson or the Administrator.

[55 FR 53299, Dec. 28, 1990]

### §511.13 Evidence.

In accordance with the notice of hearing, the committee and any authorized subcommittee will take official notice of the facts stated in the economic report to the extent they are not refuted by evidence received at the hearing. Other pertinent evidence available to the Department of Labor may be presented at the hearing. The

committee itself may call witnesses not otherwise scheduled to testify. Oral or documentary evidence may be received, but the committee shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every interested person who has met the requirements for participation as a party shall have the right to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses called by others as may be required for a full and true disclosure of the facts. Testimony on behalf of an employer or group of employers as to inability to pay the minimum wage rate specified in paragraph (1) of section 6(a) of the Act, or as to inability to adjust to a higher minimum wage rate than prescribed by any applicable wage order of the Secretary, shall be supported by tangible objective data filed as part of the prehearing statement under §511.8. Financial or other data shall include data for the most recent year or fraction thereof for which data are available. Financial statements filed in accordance with this provision, except those relating to a period of less than a full fiscal year or a fiscal year ending less than 90 days prior to the filing of the prehearing statement, shall be certified by an independent public accountant or shall be sworn to conform to and be consistent with the corresponding income tax returns covering the same years. Evidence of witnesses not present at the hearing may be submitted only by affidavits received with, or as a part of, a prehearing statement that meets the requirements of §511.8 and satisfactorily explains why each affiant cannot be present. Such affidavits will be received in evidence to the same extent that testimony from affiants would have been admitted had they been present. The committee will give such weight to these statements as it considers appropriate, and the fact that such affiants have not been subject to cross-examination may be considered, along with other relevant facts, in assessing the weight to be given such evidence.

[55 FR 53299, Dec. 28, 1990]